STATE OF WEST VIRGINIA



Offices of the Insurance Commissioner

Earl Ray Tomblin Governor

Michael D. Riley Insurance Commissioner

MAY 2014

WEST VIRGINIA INFORMATIONAL LETTER

NO. 189

TO: All Insurance Companies Doing Business in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications and Other Interested Persons

RE: Unfair Claims Settlement Practices Act, Notice of Necessary Delay Letter(s) and W.Va. Code of State Rules §§114-14-1, et seq.

This Informational Letter is provided to clarify informal interpretations previously made by the Offices of the Insurance Commissioner concerning W.Va. Code of State Rules §§114-14-1, et seq., regarding investigation of insurance claims and the required usage of notice of necessary delay letter(s) pursuant to W.Va. Code of State Rules §114-14-6.7. Any previous guidance or correspondence on this issue is hereby superseded in its entirety by this Informational Letter.

One of the central purposes of West Virginia's Unfair Claims Settlement Practices Act (W.Va. Code §33-11-4(9)) is to assure timely action on claims by insurers. An additional part of the statute is a requirement to have timely and meaningful communication with claimants so they are kept apprised of the status of their claims.

Pursuant to the aforementioned Unfair Claims Settlement Practices Act, "[n]o person shall commit or perform with such frequency as to indicate a general business practice any of the following: ...(c) [f]ailing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies." Subsequent to that statutory implementation, the West Virginia Legislature promulgated W.Va. Code of State Rules §§114-14-1, et seq., which among other provisions requires notice of necessary delay letter(s) while investigating a claim.

It is the intent of the Insurance Commissioner to interpret and clarify the following excerpts from W.Va. Code of State Rules §§114-14-1, et seq., which have been cited as lacking sufficient specificity.

- W.Va. Code of State Rules §114-14-2.6 "Investigation" means all activities of an insurer or agent directly or indirectly related to the determination of *liabilities* [emphasis added] under coverages afforded by an insurance policy or insurance contract.
- W.Va. Code of State Rules §114-14-2.9 "Settlement of claims" means all activities of the insurer or its agents which are related directly or indirectly to the *determination of the compensation* [emphasis added] that is due under coverage afforded by the insurance policy or insurance contract...
- W.Va. Code of State Rules §114-14-6.7 Notice of necessary delay in investigating claims. If the insurer needs more than thirty (30) calendar days from the date that a proof of loss from a first-party claimant or notice of claim from a third-party claimant is received to determine whether a claim should be accepted or denied, it shall notify the claimant in writing within fifteen (15) working days after the thirty day period expires.



If the investigation remains incomplete, the insurer shall provide written notification of the delay to the claimant every forty-five (45) calendar days thereafter until the investigation is complete. All such notifications must set forth the reason(s) additional time is needed for investigation...

Consequently, the Insurance Commissioner has determined that the notice of necessary delay letter(s) required by W.Va. Code of State Rules §114-14-6.7 shall be provided to the claimant any time any aspect of the claim (including but not limited to coverage, liability or damage decision components) remains undetermined and, as a result, under investigation. Therefore, anytime liability has not been determined by an insurer, liability is under investigation and the regulatory requirement to provide timely notice of necessary delay letter(s) remains an active responsibility of the insurer. Nevertheless, regardless of the liability determination or after the same has been determined, an insurer still has a duty, independent and separate from the liability decision, to provide timely notice of necessary delay letter(s) when investigating damages or any other claim component. Only one letter per claimant per required time frame is necessary to address any and all components of the claim remaining under investigation and it is not required that separate letters be sent for each component of a claim being actively investigated.

Therefore, the notice of necessary delay letter(s) should clearly discuss any and all components that remain outstanding in the investigation. Pursuant to W.Va. Code of State Rules §114-14-6.3, there is a duty to deny the claim in writing or make a written offer within ten (10) working days of completing an investigation. Therefore, either the investigation is incomplete and hence the duty to comply with necessary delay letter(s) is ongoing or it is complete and a decision is to be produced to the claimant within said timeframe either providing an offer or denying the claim so there is no dispute as to the status. Moreover, when any investigation of any component of a claim remains incomplete past the time set forth in W.Va. Code of State Rules §114-14-6.7, there should be documentation of compliance with notice of necessary delay letter(s) to the claimant(s). Additionally, if the results of an investigation into any component of a claim is communicated to the claimant and closed but evidence is submitted that would cause the insurer to re-open their investigation into that particular component of the claim, the duty to provide notice of necessary delay letter(s) would need to be reinstituted until a full and final decision is rendered on the particular component of the claim re-opened and investigated.

An ancillary inquiry to the above discussion involves an unresponsive claimant and what should be done in such occurrence regarding notice of necessary delay letter(s). As stated, the insurer has a duty to timely and adequately investigate each claim presented. The insurer should document in the claim file periods of noncompliance by the claimant and ensure clear notice is given to the claimant or their legal representative that in the absence of further evidence submitted, a claim decision will be rendered. Otherwise, if any component of the claim is still being actively investigated, notice of necessary delay letter(s) should be provided to the claimant.

A notice of necessary delay letter(s) requirement as discussed herein is to protect a claimant from not being made aware of their claim status. However, once litigation has commenced in a court of law, there is generally no ambiguity as to the status of the claim. Consequently, there is generally no requirement by insurers to send notice of necessary delay letter(s) once a lawsuit has begun with respect to the claim. Nevertheless, the Insurance Commissioner reserves the right to review and take appropriate regulatory action if unfair claim practices develop in this regard. NOTE: This determination does not relieve an insurer of other duties provided in the referenced statute and regulations concerning other aspects and requirements of claim handling under the statutory or rule provisions.

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¹ "A claimant can establish a violation of the West Virginia Unfair Trade Practices Act, W.Va. Code, 33-11-1 to -10, by showing that an insurance company, through its own actions, breached its duties under the Act by knowingly encouraging, directing, participating in, relying upon, or ratifying wrongful litigation conduct of a defense attorney hired by the insurance company to represent an insured." Barefield v. DPIC Cos., 215 W. Va. 544, 600 S.E.2d 256 (2004).

In regard to a claim involving an infant, incompetent, or incapacitated person, a lengthy period of claim inactivity may be anticipated. Under such circumstances, provided the person has representation of their interests as recognized under West Virginia law, a single notice of necessary delay letter documented in the claim file adequately explaining the same and provided to the party or their legal and/or other appointed representative is sufficient until such time as the claim may be reactivated.

In addition, the Insurance Commissioner recognizes that parties may reach an agreement in writing in which the need for sending further necessary delay letters is alleviated. Any such agreement should be documented in the claim file.

This Informational Letter does not attempt to answer all quandaries or potential circumstances that may arise in the handling of a claim regarding compliance with the rules addressed herein. When the issue is not clear, the insurer should provide the necessary delay letter and document the claim file accordingly.

If you have a question concerning this Informational Letter, please e-mail your question to Informational.Letters@wvinsurance.gov or call (304) 558-0401.

Michael D. Riley

Insurance Commissioner State of West Virginia